



**ENVIRONMENTAL PROTECTION AGENCY**

***[Docket ID Number EPA-HQ-OECA-2013-0543; FRL-9900-09-OECA]***

**Clean Water Act Class II: Proposed Administrative Settlement, Penalty Assessment and Opportunity to Comment Regarding Charter Communications, Inc.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

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**SUMMARY:** The EPA has entered into a Consent Agreement with Charter Communications, Inc. (Charter or Respondent) to resolve violations of the Clean Air Act (CAA) and requirements adopted as part of State Implementation Plans (SIPs) pursuant to the CAA, the Clean Water Act (CWA), and the Emergency Planning and Community Right-to-Know Act (EPCRA), and their implementing regulations.

The Administrator is hereby providing public notice of this Consent Agreement and proposed Final Order (CAFO), and providing an opportunity for interested persons to

comment on the CAA, CWA, and EPCRA portions of the CAFO, pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C). Upon closure of the public comment period, the CAFO and any public comments will be forwarded to the Agency's Environmental Appeals Board (EAB).

**DATES:** Comments are due on or before [*insert date 30 days from date of publication in the Federal Register*].

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2013-0543, by one of the following methods:

- [www.regulations.gov](http://www.regulations.gov): Follow the online instructions for submitting comments.
- Email: [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), Attention Docket ID No. EPA-HQ-OECA-2013-0543.
- Fax: (202) 566-9744, Attention Docket ID No. EPA-HQ-OECA-2013-0543.
- Mail: Enforcement and Compliance Docket Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460, Attention Docket ID No. EPA-HQ-OECA-2013-0543.
- Hand Delivery: Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927. Such deliveries are only accepted during the Docket's normal hours of

operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-OECA-2013-0543. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov). The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index.

Although listed in the index, some information is not publicly available, e.g., CBI or

other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW, Washington, D.C. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1927.

FOR FURTHER INFORMATION CONTACT: Philip Milton, Special Litigation and Projects Division (2248-A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; telephone: (202) 564-5029; fax: (202) 564-0010; e-mail: [Milton.Philip@epa.gov](mailto:Milton.Philip@epa.gov).

#### SUPPLEMENTARY INFORMATION

##### **Background**

This proposed settlement agreement is the result of voluntary disclosures of CAA, CWA, and EPCRA violations by Charter to the EPA. Charter is among the largest providers of cable services in the United States, offering a variety of entertainment, information, and communications solutions to residential and commercial customers, and is located at 12405 Powerscourt Drive, St. Louis, Missouri 63131, and incorporated in Delaware. The Charter facilities that underwent audits included operating facilities, corporate offices, warehouses, and other storage locations.

On October 2, 2009, the EPA and Respondent entered into a corporate audit agreement pursuant to the Agency's policy on *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy), 65 FR 19,618 (Apr. 11, 2000), in which Respondent agreed to conduct a systematic, documented, and objective review of its compliance with applicable provisions of the CAA, CWA, and EPCRA. Respondent further agreed to submit progress reports detailing the status of the audit, specific facilities assessed, and information setting forth violations discovered and corrective actions taken. As agreed upon with the EPA, Respondent submitted a final audit report to the EPA on February 19, 2010, and an addendum dated August 20, 2010. A final list of all disclosed violations is contained in Attachment A to the CAFO.

### **Proposed Settlement**

The EPA determined that Respondent satisfactorily completed its audit and has met all conditions set forth in the Audit Policy. Charter has agreed to pay a civil penalty of \$57,313 for the violations identified in Attachment A. This figure is the calculated economic benefit of noncompliance based on information provided by Respondent and use of the Economic Benefit (BEN) computer model. Of this amount, \$11,453 is attributable to CAA violations, \$3,767 is attributable to CWA violations, and \$42,093 is attributable to EPCRA violations.

The EPA and Respondent negotiated the Consent Agreement in accordance with the Consolidated Rules of Practice, 40 CFR part 22, specifically 40 CFR 22.13(b) and 22.18(b) (*In re: Charter Communications, Inc.*, CAA-HQ-2012-8005; CWA-HQ-2012-8005; and EPCRA-HQ-2012-8005). This Consent Agreement is subject to public notice and comment under Section 311(b)(6)(C) of the CWA, 33 U.S.C. 1321(b)(6)(C). The

procedures by which the public may comment on a proposed CWA Class II penalty order, or participate in a Class II penalty proceeding, are set forth in 40 CFR 22.45. The deadline for submitting public comment on this proposed Final Order is [*insert date 30 days from date of publication in the Federal Register*]. All comments will be transferred to the EAB for consideration. The EAB's powers and duties are outlined in 40 CFR 22.4(a).

### **Disclosed and Corrected Violations**

#### **CAA**

Respondent disclosed that it violated CAA Section 110, 42 U.S.C. 7410, and requirements adopted as part of federally-approved State Implementation Plans (SIPs) at sixty-six (66) facilities listed in Attachment A and located in the following five (5) states: Alabama, Nebraska, Ohio, Tennessee, and Washington. Section 110(a)(1) of the CAA, 42 U.S.C. 7410(a)(1), requires states to submit plans to implement, maintain, and enforce ambient air quality standards. These states' SIPs include requirements approved by the EPA under Section 110 of the CAA, 42 U.S.C. 7410. As detailed below, these federally-approved provisions have been incorporated into the respective SIPs and are therefore federally-enforceable.

At the time of the violations, the Alabama SIP contained permit requirements and exemption provisions which were approved by the EPA on August 28, 1985, and became effective and federally-enforceable on October 28, 1985 (see 50 FR 34,804). These provisions required that Respondent either obtain permits to operate emergency generators or request exemptions in accordance with Ala. Admin. Code r. 335-3-14-.01(1) and (5). Respondent operated fifty-four (54) emergency generators at various

facilities across Alabama and failed to obtain the permits or required exemptions for these emergency generators.

At the time of the violations, the Nebraska SIP contained construction permit requirements which were approved by the EPA on July 8, 2003, and became effective and federally-enforceable on September 8, 2003 (see 68 FR 40,528). These provisions required that Respondent apply for and obtain an emergency generator construction permit in accordance with Title 129 of Neb. Admin. Code 17-001.01. Respondent operated an emergency generator at its facility located in Kearney, Nebraska. Respondent violated the federally-approved Nebraska SIP requirements by failing to apply for and obtain the required construction permit for this emergency generator.

At the time of the violations, the Ohio SIP contained permit and permit-by-rule requirements which were approved by the EPA on January 22, 2003, and became effective and federally-enforceable on March 10, 2003 (see 68 FR 2,909). These provisions required that Respondent apply for and obtain a permit or coverage under the permit-by-rule to operate the emergency generator at its Bellefontaine, Ohio facility in accordance with Ohio Admin. Code 3745-31-02 and 3745-31-03(A)(4)(a). Respondent violated the federally-approved Ohio SIP requirements by failing to apply for and obtain the required permit or coverage under the permit-by-rule for this emergency generator.

At the time of the violations, the Tennessee SIP contained a construction permit requirement which was approved by the EPA on July 29, 1996, and became effective and federally-enforceable on September 12, 1996 (see 61 FR 39,332). This provision required that Respondent obtain construction permits for its facilities in Blountville, Gatlinburg, Clarksville, and Jackson, Tennessee in accordance with Tenn. Comp. R. & Regs. 1200-

03-09-.01(1)(a). Respondent violated the federally-approved Tennessee SIP requirements by failing to obtain construction permits for emergency generators at these four (4) facilities.

At the time of the violations, the Washington SIP contained a registration requirement for stationary internal combustion engines of five hundred (500) horsepower or more and a notice of construction/approval requirement for new sources or emissions units which were approved by the EPA, and became effective and federally-enforceable, on June 2, 1995 (see 60 FR 28,726). The Washington SIP also contained the Yakima Regional Clean Air Agency's registration and construction notification/approval requirements which were approved by the EPA on February 2, 1998, and became effective and federally-enforceable on March 4, 1998 (see 63 FR 5,269). Respondent operated emergency generators at various facilities across Washington and was required to register and provide notice of construction and obtain approval for emergency generators at five (5) facilities in Walla Walla, Ellensburg, East Wenatchee, Colville, and Kennewick, Washington in accordance with Wash. Admin. Code 173-400-100(1)(z) and 173-400-110. Respondent was required to register and give notice of construction and obtain approval for emergency generators at two (2) facilities in Yakima and Sunnyside, Washington under Sections 4.01 and 4.02 of Restated Regulation I of the Yakima County Clean Air Authority. Respondent violated federally-approved Washington SIP requirements by failing to apply for and obtain registrations and meet notice requirements for emergency generators at its facilities in Walla Walla, Ellensburg, East Wenatchee, Colville, and Kennewick, Washington, and for failure to register and give notice of



construction for emergency generators at its Yakima and Sunnyside, Washington facilities.

Charter violated federally-approved SIP requirements which were approved by the EPA pursuant to CAA Section 110, 42 U.S.C. 7410. Charter is therefore subject to federal enforcement under CAA Section 113, 42 U.S.C. 7413. The EPA, as authorized by CAA Section 113(d), 42 U.S.C. 7413(d), may assess a civil penalty for these violations. Under CAA Section 113(d), 42 U.S.C. 7413(d), the Administrator may issue an administrative penalty order to any person who has violated or is in violation of any applicable requirement or prohibition of the CAA, including any rule, order, waiver, permit, or plan. Proceedings under CAA Section 113(d), 42 U.S.C. 7413(d), are conducted in accordance with 40 CFR Part 22. The EPA, as authorized by the CAA, has assessed a civil penalty for these violations of federally-approved and federally-enforceable SIP requirements.

Respondent disclosed that it violated CAA Section 111, 42 U.S.C. 7411, and 40 CFR 60.4207, when it failed to convert from high-sulfur (5,000 ppm) to low-sulfur (500 ppm) diesel fuel on October 1, 2007, at one (1) facility in Minnesota. The EPA, as authorized by CAA Section 113(d), 42 U.S.C. 7413(d), has assessed a civil penalty for this violation.

## **CWA**

Respondent disclosed that it failed to prepare and implement a Spill Prevention, Control, and Countermeasure (SPCC) Plan in violation of CWA Section 311(j), 33 U.S.C. 1321(j), and the implementing regulations found at 40 CFR part 112, at two (2) facilities located in Massachusetts and Missouri and identified in Attachment A.

Under CWA Section 311(b)(6)(A), 33 U.S.C. 1321(b)(6)(A), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of CWA Section 311(b)(3), 33 U.S.C. 1321(b)(3), or who fails or refuses to comply with any regulations that have been issued under CWA Section 311(j), 33 U.S.C. 1321(j), may be assessed an administrative civil penalty of up to \$177,500 by the EPA. Class II proceedings under CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), are conducted in accordance with 40 CFR part 22. As authorized by CWA Section 311(b)(6), 33 U.S.C. 1321(b)(6), the EPA has assessed a civil penalty for these violations.

Pursuant to CWA Section 311(b)(6)(C), 33 U.S.C. 1321(b)(6)(C), the EPA will not issue an order in this proceeding prior to the close of the public comment period.

## **EPCRA**

Respondent disclosed that it violated EPCRA Section 302(c), 42 U.S.C. 11002(c), and the implementing regulations found at 40 CFR part 355, at forty-seven (47) facilities listed in Attachment A when it failed to notify the State Emergency Response Commission (SERC) and/or the Local Emergency Planning Committee (LEPC) that these facilities are subject to the requirements of Section 302(c) of EPCRA. These forty-seven (47) facilities are located in the following states: Alabama, California, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Nebraska, Oregon, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

Respondent disclosed that it violated EPCRA Section 303(d), 42 U.S.C. 11003(d), and the implementing regulations found at 40 CFR part 355, at forty-seven (47) facilities listed in Attachment A when it failed to designate a facility emergency coordinator and

notify the LEPCs with jurisdiction over these facilities. These forty-seven (47) facilities are located in the following states: Alabama, California, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Nebraska, Oregon, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

Respondent disclosed that it violated EPCRA Section 311(a), 42 U.S.C. 11021(a), and the implementing regulations found at 40 CFR part 370, at seventy-eight (78) facilities listed in Attachment A when it failed to submit a Material Safety Data Sheet (MSDS) for a hazardous chemical(s) and/or extremely hazardous substance(s) or, in the alternative, a list of such chemicals, to the LEPCs, SERCs, and the fire departments with jurisdiction over these facilities. These seventy-eight (78) facilities are located in the following states: Alabama, California, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Nebraska, Nevada, Oregon, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

Respondent disclosed that it violated EPCRA Section 312(a), 42 U.S.C. 11022(a), and the implementing regulations found at 40 CFR Part 370, at seventy-eight (78) facilities listed in Attachment A when it failed to prepare and submit emergency and chemical inventory forms to the LEPCs, SERCs, and the fire departments with jurisdiction over these facilities. These seventy-eight (78) facilities are located in the following states: Alabama, California, Connecticut, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, North Carolina, Nebraska, Nevada, Oregon, South Carolina, Tennessee, Texas, Washington, and Wisconsin.

Under EPCRA Section 325, 42 U.S.C. 11045, the Administrator may issue an administrative order assessing a civil penalty against any person who has violated

applicable emergency planning or right-to-know requirements, or any other requirement of EPCRA. Proceedings under EPCRA Section 325, 42 U.S.C. 11045, are conducted in accordance with 40 CFR part 22. The EPA, as authorized by EPCRA Section 325, 42 U.S.C. 11045, has assessed a civil penalty for these violations.

**List of Subjects**

Environmental Protection

Dated: August 1, 2013.

*Andrew R. Stewart, Acting Director,  
Special Litigation and Projects Division,  
Office of Civil Enforcement,  
Office of Enforcement and Compliance Assurance.*

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